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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
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14 MICHAEL ZELENY,

15 Plaintiff,

16 vs.

17 EDMUND G. BROWN, Jr., *et al.*,

18 Defendants.
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Case No. CV 17-7357 JCS

Assigned to:

The Honorable Richard G. Seeborg

Discovery Matters:

The Honorable Thomas S. Hixson

**STIPULATION TO CONTINUE
CERTAIN PRETRIAL DATES**

[Proposed Order filed concurrently]

Current Dates:

Discovery Cutoff: April 19, 2019
Expert Disclosures: May 17, 2019
Supplemental Experts: June 7, 2019
Expert Discovery Cutoff: July 12, 2019

Proposed Dates

Discovery Cutoff: July 19, 2019
Expert Disclosures: August 1, 2019
Supplemental Experts: August 22, 2019
Expert Discovery Cutoff: Sept. 12, 2019

Action Filed: December 28, 2017

Trial Date: November 18, 2019

STIPULATION

Plaintiff Michael Zeleny (“Plaintiff”) and defendants Xavier Becerra, the City of Menlo Park, and Dave Bertini (collectively, “Defendants”) hereby stipulate to continue certain pretrial dates in light of Plaintiff’s filing of a First Amended Complaint naming New Enterprise Associates, Inc. as a defendant.

I. RECITALS

1. Plaintiff filed his Complaint in this action on December 28, 2017, asserting claims against Defendants and Governor Edmund G. Brown (“Brown”). Plaintiff asserted claims against the City of Menlo Park and Dave Bertini for violation of his rights under the First, Second, and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983. Plaintiff sued former Governor Edmund G. Brown, Jr. and Attorney General Becerra, in their official capacities, for purposes of asserting a facial challenge to California Penal Code sections 25510, 26350, 26375, 26400, and 26405.

2. In substance, Plaintiff’s claim against the City of Menlo Park and Dave Bertini alleged that those defendants were involved in an effort to stop Plaintiff’s protests for the benefit of New Enterprise Associates, Inc. (“NEA”).

3. The Court dismissed Governor Brown from this action pursuant to a Motion to Dismiss, which Plaintiff did not oppose as to Governor Brown.

4. The Parties participated in an early settlement conference before Magistrate Judge Nathanael Cousins on May 17, 2018 and a follow-up call in July 2018. They were unsuccessful in resolving the matter.

5. The Court issued its scheduling order in this case on June 14, 2018, setting a trial date of November 18, 2019.

6. On January 11, 2019, Plaintiff served discovery requests on defendants the City of Menlo Park and Bertini requesting, among other things, “Communications with NEA Relating to . . . Zeleny.”

7. Zeleny also served subpoenas on NEA and its executive Scott Sandell. NEA

1 moved to quash the subpoena directed to it, and briefing on that motion is still underway.

2 8. On February 15, the parties filed a stipulation to continue certain discovery
3 deadlines in this matter, which the Court approved on February 19. Pursuant to the Court's
4 February 19 Order, the following schedule is in effect:

5 a. Completion of fact discovery: April 19, 2019

6 b. Initial expert disclosures: May 17, 2019

7 c. Supplemental/rebuttal expert disclosures: June 7, 2019

8 d. Completion of expert discovery: July 12, 2019

9 9. On or about March 5, 2019, the City of Menlo Park made an initial production
10 of documents in response to Plaintiff's Requests for Production.

11 10. On March 19, 2019, Plaintiff took the deposition of Chief Bertini, individually
12 and as the Rule 30(b)(6) designee of the City of Menlo Park.

13 11. Plaintiff contends that the documents produced by the City of Menlo Park, and
14 confirmed in Chief Bertini's deposition, evidence a conspiracy between NEA, the City of
15 Menlo Park, and Chief Bertini to stop Zeleny from engaging in his peaceful protests.

16 12. Zeleny contends that this evidence supports claims for (a) conspiracy to violate
17 42 U.S.C. § 1983, *see Franklin v. Fox*, 312 F.3d 423, 441 (9th Cir. 2002) ("[a] private
18 individual may be liable under [42 U.S.C.] § 1983 if she conspired or entered joint action with
19 a state actor"); and (b) conspiracy to violate civil rights under 42 U.S.C. § 1985(3), *see*
20 *Fargaza v. FBI*, 916 F.3d 1202 (9th Cir. 2019).

21 13. Although the City of Menlo Park and Chief Bertini deny the existence of any
22 conspiracy, all parties stipulated to the filing of Zeleny's First Amended Complaint, naming
23 NEA as a party to this action. The Court approved the stipulation on April 1, 2019, and
24 Zeleny filed his First Amended Complaint on that date. Zeleny is awaiting issuance of a
25 summons on NEA.

26 14. Counsel appeared at a Status Conference on April 4, 2019 and discussed with
27 the Court the scheduling impact of NEA's addition as a party. Among other things, the
28 parties have scheduled a number of depositions in the coming weeks based on the current

1 discovery cut-off of April 19.

2 15. All counsel agree that it would be inefficient to take these depositions before
3 NEA appears in this action. Doing so will likely result in significant duplication of efforts
4 and likely repeated depositions as NEA will likely seek to participate once it appears. This
5 will cause unnecessary burden on the parties and third-party deponents.

6 16. Counsel agreed that the best course would be to postpone the depositions until
7 after NEA appears and can participate in the discovery process. Counsel seek to extend
8 discovery-related deadlines by approximately 90 days to accommodate NEA's appearance in
9 this action, any Rule 12 motions, and NEA's participation in discovery.

10 17. The Court indicated that it was amenable to modifying the current schedule,
11 other than the dates set for Summary Judgment hearings (September 12, 2019) and trial
12 (November 19, 2019). The Court directed the parties to file a stipulation in this regard.

13 14 **II. STIPULATION**

15 Based on the foregoing, the Parties hereby stipulate and agree as follows:

16 18. The Parties jointly request an order from the Court vacating the current
17 discovery deadlines and extending those deadlines by approximately 90 days to the following
18 dates:

- | | | | |
|----|----|---|--------------------|
| 19 | a. | Completion of fact discovery: | July 19, 2019 |
| 20 | b. | Initial expert disclosures: | August 1, 2019 |
| 21 | c. | Supplemental/rebuttal expert disclosures: | August 22, 2019 |
| 22 | d. | Completion of expert discovery: | September 12, 2019 |

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1 19. The Parties jointly apply for an order in the form submitted herewith approving
2 this stipulation.

3 **So Stipulated.**

4 Dated: March 21, 2019

Respectfully submitted,

5 s/ Damion Robinson

6 David W. Affeld

7 Damion D. D. Robinson

8 Affeld Grivakes LLP

9 Attorneys for Plaintiff Michael Zeleny

10 Noreen P. Skelly

11 Office of the Attorney General

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15 Attorneys for Defendants the City of Menlo Park
16 and Dave Bertini

PROOF OF SERVICE

I hereby certify that on April 9, 2019, I electronically filed the foregoing document using the Court's CM/ECF system. I am informed and believe that the CM/ECF system will send a notice of electronic filing to the interested parties.

/s/ Gabrielle Bruckner
Gabrielle Bruckner